MUCKLESHOOT INDIAN TRIBE, Appellant	:	Order Affirming Decision
v.	:	
	:	Docket No. IBIA 94-78-A
CHIEF, BRANCH OF JUDICIAL SERVICES, BUREAU OF INDIAN AFFAIRS, Appellee	:	July 7, 1994

Appellant Muckleshoot Indian Tribe seeks review of a February 8, 1994, decision issued by the Chief, Branch of Judicial Services, Bureau of Indian Affairs (Chief; BIA), declining to consider appellant's application for a FY 1994 Special Tribal Court grant because the application was not accompanied by a current tribal resolution or other written expression of support. For the reasons discussed below, the Board of Indian Appeals (Board) affirms that decision.

Appellant contends that the Chief was incorrect in determining that its application did not include a current tribal resolution or other written expression of support, because the application included an "Alternate Tribal Resolution," which, appellant argues, is a "format commonly used by the Tribal Council as a means of providing written expression of policy-level approval in matters that arise between regularly scheduled meetings" (Statement of Reasons at 1) .

The "Alternate Tribal Resolution," which is unnumbered and undated, states:

ALTERNATE TRIBAL RESOLUTION

TO CONDITIONALLY APPROVE A BIA SPECIAL TRIBAL COURT FUNDING APPLICATION

WHEREAS, the Muckleshoot Indian Tribal Council is the duly constituted governing body for the Muckleshoot Indian Reservation by authority of and is herein acting solely pursuant to its constitution and by-laws approved May 13, 1936 by the Secretary of the Interior, and as amended June 28, 1977 and not pursuant to its Indian Reorganization Act Corporate Charter ratified October 31, 1936; and

WHEREAS, a grant application for BIA Special Tribal Court funding, summarized in the one-page narrative hereto and herein incorporated by reference, is currently being prepared by the Muckleshoot Division of Tribal Attorneys to undertake a special

court project in the amount of $35,000 to include both direct costs and indirect costs, with such application not having been administratively processed according to Tribal Council policy, and

WHEREAS, the Tribal Council has reviewed the referenced summary,

NOW THEREFORE BE IT RESOLVED by the Tribal Council of the Muckleshoot Indian Tribe that the subject summary and project application is hereby conditionally approved as a one-time, non-recurring program organizationally-assigned to the Muckleshoot Division of Tribal Attorneys to initially begin and end on the dates specified in executed funding agreements and, subject to administrative processing according to Tribal Council policy, to thereafter continue and/or be extended through Tribal Council signatory authorities specified herein; and

NOW THEREFORE BE IT FURTHER RESOLVED that, subject to administrative processing according to Tribal Council policy, the Chairperson of the Tribal Council or in the absence of the Chairperson, the Vice-Chairperson, is hereby authorized to sign, execute and negotiate all contracts, agreements and amendments thereto on behalf of the Tribe without further adoption of a resolution in the securing and performance of this activity throughout its duration and for such extensions as may be executed as provided herein provided that such authorization does not exceed the specific intent and terms of the aforementioned document and/or activity and is executed in compliance with all applicable Tribal, federal and other ordinances, laws, regulations, policies and procedures.

We, the undersigned Tribal Council members representing a majority vote of the Tribal Council, hereby attest that we will cast a favorable vote for the above stated resolution at the next regular or special Tribal Council Meeting.

According to the number of signature lines provided, the document was signed by five of the nine Tribal Council members.

The Chief argues that the intent of the announcement of the Special Tribal Court program was to allow applications from traditional tribes in a manner consistent with the practices of those tribes, but to require a tribal resolution from tribes organized under a written constitution. She further contends that the best information available to her indicates that appellant has used the "Alternate Tribal Resolution" format only in gaming matters before the National Indian Gaming Commission, and that this format has not been used in other dealings with BIA. Finally, she contends that use of the "Alternate Tribal Resolution" format may violate Article VI, section 5, of appellant's Constitution, which requires that "[a]ll final decisions of the tribal council on matters of temporary interest (such as

* * * petitions * * * to the Secretary of the Interior) * * * shall be embodied in resolutions."

An appellant for funding under a BIA grant program bears the burden of demonstrating that it has met the program requirements. Section IV(E)(2) of the announcement of the Special Tribal Court grant program required that each application be accompanied by "a current tribal resolution or such other written expression as tribal laws or practice require which indicates the support or commitment of the council to the proposed project" (58 FR 53374, 53377). Appellant argues only that it has used an "Alternate Tribal Resolution" in other contexts; it has not responded to the Chief's contention that this format is not "required" by tribal law, nor has it supported its position by citation to any tribal enactment authorizing and defining the use of an "Alternate Tribal Resolution."

The Board has before it no information indicating that the "Alternate Tribal Resolution" is required by tribal law or practice, or showing what force and effect such a document has. Furthermore, the actual document in appellant's application is conditional. Although appellant might argue that the conditions to be satisfied are administrative only, the Board is not required to be blind to the fact that the fulfillment of "administrative" procedures can result in a reversal of an initial decision.

Under these circumstances, appellant has not carried its burden of proving that the "Alternate Tribal Resolution" submitted with its application met the requirements of section IV(E)(2) of the Special Tribal Court grant program announcement.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, the February 8, 1994, decision of the Chief, Branch of Judicial Services, is affirmed.

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Kathryn A. Lynn
Chief Administrative Judge

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Anita Vogt
Administrative Judge